

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF BELL ATLANTIC-DELAWARE, INC.)
FOR APPROVAL OF ITS STATEMENT OF)
TERMS AND CONDITIONS UNDER SECTION) PSC DOCKET NO. 96-324
252(f) OF THE TELECOMMUNICATIONS)
ACT OF 1996)
(FILED DECEMBER 16, 1996))

FINDINGS, OPINION & ORDER NO. 4542

AND NOW, TO-WIT, this 8th day of July, 1997, the
Commission finds and Orders as follows:

I. BACKGROUND

1. Under the provisions of 47 U.S.C. § 251(c)(2) as added by the Telecommunications Act of 1996¹ (the "Act"), Incumbent Local Exchange Carriers ("ILECs") including Bell operating companies ("BOCs"), such as Bell Atlantic-Delaware, Inc. ("BA-Del"), are required to provide any requesting telecommunications carrier with interconnection to the ILEC's network. The ILECs must also provide to a requesting carrier nondiscriminatory access to network elements on an unbundled basis. 47 U.S.C. § 251(c)(3). The rates for such interconnection and unbundled elements must be

¹Pub. L. No. 104-104, 110 Stat. 56, 47 U.S.C. § 251 et seq.

nondiscriminatory and just and reasonable, under the pricing standards set forth in § 252(d)(1). In addition, the ILECs are required, under § 251(c)(4), to offer all requesting telecommunications carriers wholesale rates for any and all telecommunications services that the ILEC provides at retail rates to its subscribers. The other carrier may then resell the purchased services on a competitive basis. Pursuant to § 252(d)(3), state regulatory agencies are required to develop wholesale rates for resale of telecommunications services on a competitive basis, under standards set forth in this section of the Act.

2. Under 47 U.S.C. § 252(f), a BOC may file with a state regulatory commission a Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services ("SGAT" or "Statement"), which sets forth rates, terms, and conditions for all of the services and capabilities that it is required to offer to requesting carriers under the Act and implementing regulations promulgated by the Federal Communications Commission ("FCC"). Under 47 U.S.C. § 271(f)(2), the state commission may not approve such a Statement unless the Statement complies with the pricing provisions set forth in § 252(d) and with

§ 251 and the regulations promulgated thereunder. Moreover, except as provided in § 253, nothing in § 251 prohibits a state commission, in its review of the Statement, from establishing or enforcing other requirements of state law, including compliance with intrastate telecommunications service quality standards or requirements.

3. On December 16, 1996, BA-Del filed with the Delaware Public Service Commission (the "Commission") an Application, with supporting testimony and material, seeking approval of an SGAT to govern interconnection to its network. Under § 252(f)(3), the state commission must normally either complete its review of the SGAT within sixty (60) days of the BOC's filing or allow the Statement to take effect. However, a BOC may agree to a longer review period. In this docket, BA-Del initially agreed not to implement the SGAT for at least 140 days after filing and later agreed to forego implementation until the conclusion of this proceeding. See, Order No. 4371, December 30, 1996.²

4. By Order No. 4371, dated December 30, 1996, the Commission determined, pursuant to 47 U.S.C. § 252(f), to review

²Under § 252(f)(3), a Commission which neither accepts nor rejects the SGAT during the sixty (60) day (or otherwise extended) review period may nonetheless continue its review and approve or reject the SGAT even after it has gone into effect.

BA-Del's SGAT and, under the authority granted by 26 Del. C. § 704(3), initiated this docket, scheduled proceedings, and designated two Hearing Examiners to conduct such proceedings to investigate and report to the Commission in an expeditious manner whether BA-Del's Statement complies with the requirements of the Act.

5. Pursuant to the Commission's Order, BA-Del published notice of the filing of its application. On or before the January 10, 1997 deadline established by the Commission's Order, AT&T Communications of Delaware, Inc. ("AT&T"), Cable Television Association of Maryland, Delaware & the District of Columbia ("CTA"), Conectiv Communications, Inc. ("CCI"), Eastern TeleLogic Corporation ("ETC"), MFS Intelenet of Delaware, Inc. ("MFS"), Sprint Communications Company ("Sprint"), and Telecommunications Resellers Association ("TRA") filed petitions for leave to intervene in this docket. These petitions were granted by the Hearing Examiners, pursuant to authority granted by Order No. 4371. The Public Advocate filed her Notice of Intervention in this proceeding on January 13, 1997.

6. In all, 24 witnesses filed direct testimony. BA-Del filed the direct testimony of nine witnesses, and the rebuttal testimony of eight. AT&T filed testimony from twelve witnesses.

Staff, the OPA, and MFS each filed the testimony of one witness. By agreement of the parties and with the Hearing Examiners' approval, witnesses for AT&T, Staff, OPA, and MFS presented brief oral surrebuttal to BA-Del's rebuttal testimony.

7. In accordance with the procedural schedule, duly noticed public evidentiary hearings were conducted in Wilmington from February 18 through 21, 1997. Witnesses were cross-examined by parties wishing to do so. Although present at the hearings, neither ETC, CTA, CCI, nor Sprint presented any witnesses. ETC and Sprint conducted limited cross-examination of some of the witnesses. CCI and CTA did not participate in the proceedings. No member of the public appeared at, or otherwise participated in, these proceedings.

8. At the conclusion of the hearings, the Hearing Examiners closed the evidentiary record, which then consisted of 93 exhibits and a verbatim transcript of the proceedings. The parties then filed post-hearing briefs.

9. The Hearing Examiners, on April 7, 1997, issued a 118 page Report with their findings and recommendations based on the testimony, evidence and arguments. (the "April 7 Report"). As permitted under the schedule established by Order 4371, BA-Del,

CTAC, CCI, ETC, Sprint, Staff and the OPA filed exceptions to the Hearing Examiners' Report.

10. The Commission considered the April 7 Report, the exceptions filed, and the oral argument of the parties at its duly noticed public meeting of April 22, 1997. At that meeting, the Commission determined to adopt several of the Hearing Examiners' recommendations but to defer consideration of other issues, and any final decision on adoption, rejection or modification of the proposed SGAT, pending a remand to the Hearing Examiners. During the remand, the Hearing Examiners were to consider several issues raised by the parties but not previously addressed by the Hearing Examiners, as well as additional cost model data to be filed by various parties. The Commission formalized these determinations by Interlocutory Order 4488, issued April 29, 1997.

11. On April 29, BA-Del, AT&T and Staff submitted to the Hearing Examiners the result of "rate runs" which the Commission had requested at its April 22 meeting. These rate runs developed the prices of various Unbundled Network Elements ("UNEs") using the different cost models sponsored by these parties but using the inputs recommended by the Hearing Examiners. On May 9, 1997, the Hearing Examiners issued a Report making findings and recommendations as to specific UNE rates as well as the issues the

Commission remanded by Interlocutory Order 4488. (the "May 9 Report").

12. At its public meeting of May 13, the Commission determined to adopt several more of the recommendations made in the April 7 Report. It heard argument on, but did not decide, the issues remanded to the Hearing Examiners by Order 4488 and instead again remanded the matter to the Hearing Examiners for their reconsideration of certain limited issues. The Commission formalized these determinations by Interlocutory Order 4508, issued May 27, 1997.

13. The Hearing Examiners allowed interested parties to submit supplemental briefs or memoranda concerning the issues on second remand and BA-Del, AT&T, and CCI did so. On May 27, the Hearing Examiners issued a Report containing their Findings and Recommendations on the issues remanded by Interlocutory Order 4508 (the "May 27 Report").

14. At its public meeting of June 3, 1997, the Commission considered the April 7, May 9, and May 27 Reports of the Hearing Examiners as well as the submissions and arguments of the parties. After deliberations, the Commission determined the issues not previously decided. This Final Order announces the Commission's final determination on all substantive issues

considered by the Commission during its deliberations of April 22, May 13 and June 3, summarizes the relevant evidence; and provides the Commission's factual findings and legal conclusions.

II. DISCUSSION

A. The Commission Declines To Approve BA-Del's SGAT As Filed

15. The Hearing Examiners characterized this docket as "one of the most crucial ever to come before this Commission." April 7 Report at 7. Under 47 U.S.C. § 252(f)(1), an approved SGAT functions similarly to a tariff; that is, it sets out the rates, terms, and conditions under which a competitor may obtain interconnection, unbundled elements and/or services from BA-Del without further negotiation. Inevitably, an approved SGAT will establish a benchmark for the future negotiation of interconnection agreements. Thus, it is of critical importance that the Commission determine that the SGAT contains rates, terms and conditions that will allow competition to flourish in Delaware. The Hearing Examiners described the Commission's tasks as follows:

First, the Commission must insure that prices under the SGAT for interconnection, unbundled elements, and transport and termination are just and reasonable in accordance with the Act. Second, the Commission must determine, pursuant to 47 U.S.C. §252(d)(4), that the level of discount for resale from BA-Del's

retail service rates excludes the portion of such rates that are "attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." Third, in accordance with the provisions of §251, the Commission must insure that the remaining, non-price provisions of the SGAT conform to the Act and to the FCC's regulations thereunder. Lastly, this Commission must also ensure that the SGAT now under review also meets all of the requirements of Delaware law as well as complies with intrastate telecommunications service quality standards or requirements.

16. Under 47 U.S.C. § 252(f)(2), this Commission may not approve BA-Del's SGAT unless it meets the first three of these four standards. The Commission would be failing in its duties under state law if it did not require compliance with the final standard.

17. As the ensuing discussions will show, the Commission concludes that the SGAT, as filed by BA-Del on December 16, 1996, does not meet the foregoing standards. The Commission accordingly does not approve the SGAT as filed. (5-0) The subsequent sections of this Final Order address particular issues concerning the SGAT and describe the modifications necessary should BA-Del choose to resubmit an SGAT for Commission approval.

B. Rates For Unbundled Network Elements

18. BA-Del's proposed SGAT included the rates it proposed to charge for the UNES it will make available under 47 U.S.C. § 251(c)(3). The Hearing Examiners identified a number of sub-issues relating to UNE rate setting which they categorized into five general subject areas: (a) costing principles; (b) cost models; (c) major inputs to cost models; (d) de-averaging; and (e) specific rates for unbundled services. We find this classification appropriate and will follow it in the Commission's discussion.

(1) Costing Principles

19. The costing principles appropriate for the setting of just and reasonable rates for interconnection and for unbundled network elements are derived from pricing standards set forth in 47 U.S.C. § 252(d). Subsection 252(d)(1) mandates that charges for interconnection of facilities and network elements (i) be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable);" (ii) be "nondiscriminatory;" and (iii) "may include a reasonable profit."

20. On August 8, 1996, the FCC issued an Order promulgating rules and regulations to implement the provisions of

the Act.³ The FCC's Order purported to interpret the statutory requirements set forth above and also sought to impose its interpretation of the Act's mandates on state commissions as they set rates for interconnection and unbundled network elements. The FCC Order found that prices for interconnection and unbundled elements should be "based on the local telephone companies' Total Service Long-Run Incremental Cost of a particular network element, which the Commission calls 'Total Element Long-Run Incremental Cost' ("TELRIC"), plus a reasonable share of forward-looking joint and common costs." FCC Order ¶ 29. The FCC concluded that the appropriate costing methodology should be based on a forward-looking methodology for "the most efficient technology deployed in the incumbent Local Exchange Carriers ("LECs") current wire center locations." FCC Order ¶ 685.

21. On October 15, 1996, the Court of Appeals for the Eighth Circuit issued an Order that stayed the operation and effect of the pricing regulations (including the wholesale discount provisions) and the "pick and choose" rule contained in the FCC Order. Iowa Utilities Board v. FCC, No. 96-3321, Order Granting

³First Report and Order, In The Matter Of The Local Competition Provisions In The Telecommunications Act of 1996, CC Dkt. No. 96-98, FCC 96-325 (rel. August 8, 1996) ("Order" or "FCC Order").

Stay Pending Judicial Review at 18-21 (8th Cir. Oct. 15, 1996). The Court of Appeals based its decision on a finding that the appealing ILECs and state utility commissions would likely prevail in their argument that the FCC has no jurisdiction under the Act to establish pricing regulations regarding intrastate telephone services. Id. The primary consequence of the Court of Appeals' stay action is that the pricing decisions under the Act are now within the control of state commissions.

22. Notwithstanding the stay, for the purposes of this proceeding, all parties to this proceeding agreed that the FCC's TELRIC pricing standard is the appropriate one by which to measure the justness and reasonableness of the rates for interconnection and unbundled network elements. In particular, although BA-Del recognizes that the Commission is not required strictly to adhere to the FCC Order when establishing rates for interconnection and unbundled elements, BA-Del's cost studies and pricing recommendations "adhere[] as closely as possible" with the FCC Order. BA-Del, however, seeks to preserve the ability to file revised cost studies (and revised rates) for the Commission's review and approval, if the FCC Order subsequently is modified. (BA-Del SGAT Petition at n. 2.)

23. The Hearing Examiners recommended that the Commission independently adopt the TELRIC methodology for use in Delaware, regardless of whether the FCC's Order is eventually upheld. The Commission agrees with the Hearing Examiners. The Commission finds that the "TRILIC" methodology, as described by the FCC, is appropriate as the standard for determining just and reasonable rates under § 252(d)(1) for unbundled network elements and interconnection in Delaware, and that this is so regardless of whether the FCC acted within its powers in imposing this standard on the states. (5-0)

24. All parties agree in principal that the TELRIC methodology requires "forward-looking", "long-run" costing. However, BA-Del's witnesses argued that these phrases should be given different meanings than those understood by the other parties. In particular, the BA-Del witnesses contended that long-run costing principles do not require the cost analysis to assume a least cost, most efficient network as it would be constructed at a single hypothetical point in the future. Rather, BA-Del asserts that cost analysis should reflect the aggregate costs of likely improvements to the real network. The Hearing Examiners' April 7 Report summarizes the evidence and arguments submitted by the

parties on this issue at ¶¶24-32. The Hearing Examiners concluded that:

BA-Del's cost analysis is, generally, deficient in that it does not reflect a long-run approach, but rather a series of short-run cost estimates, aggregated to produce a total.

At the time of the April 7 Report, the Hearing Examiners did not have the benefit of having before them particular rate recommendations for particular UNEs. Rather, they were faced with the necessity of identifying an appropriate methodology under which just and reasonable rates might be determined. Subsequently, however, at the Commission's direction, the parties were given the opportunity to submit specific rates, and the Hearing Examiners were able to recommend rates to us from among those submitted. Because we adopt the Hearings Examiners' recommendations concerning specific rates (and do not adopt any party's cost study), it is not necessary for us to reach the issue of whether BA-Del's cost study was conducted in conformance with TELRIC. Rather, we simply determine that the rates we are adopting, regardless of the cost study by which they were generated, appear to be within the range of just and reasonable TELRIC-based rates.

(2) Cost Models

25. Three parties presented cost models for pricing unbundled network elements for consideration in this proceeding. BA-Del used a series of seven proprietary Bell Atlantic and/or Bellcore cost models to determine its proposed prices for UNEs. AT&T witness Murray used the Hatfield Model, Release 2.2.2, to determine AT&T's proposed prices for BA-Del's unbundled network elements. Staff witness Johnson used the Telecom Economic Cost Model ("TECM"), developed by his firm, as an aid to determining his recommended prices for BA-Del's unbundled network elements.

26. The Hearing Examiners summarized the testimony and evidence concerning the strengths and weaknesses of these various cost models at ¶¶ 35-54 of the April 7 Report. The Hearing Examiners concluded that it was unnecessary to endorse any one model because, despite their differences, the models operate to produce generally similar results if given similar inputs. The Commission agrees with this reasoning and does not explicitly endorse any specific cost model presented in this proceeding. (5-0) To the extent that the results generated by the models vary even when the inputs are conformed, the Commission believes it may exercise its discretion to determine a just and reasonable rate from the range of results.

(3) Major Inputs

27. As noted above, the real questions concerning costs revolve around the inputs to be plugged into the forward-looking models. The Hearing Examiners identified seven major areas of dispute concerning model input values: (a) cost of capital; (b) depreciation rates; (c) fill factors; (d) copper/fiber mix; (e) switch purchase discount; (f) common overhead factor; and (g) digital loop carrier ("DLC") cost.

(a) Cost Of Capital

28. The Hearing Examiners summarized the evidence and arguments concerning the cost of capital in the April 7 Report at ¶¶ 59-67. The Commission incorporates the Hearing Examiner's summary by reference as if fully set forth herein.⁴ In sum, the Hearing Examiners recommended that the Commission find an overall cost of capital of 10.28%, based on a cost of debt of 7.7%, a cost

⁴In numerous places throughout this Order, the Commission references the Hearing Examiners' Reports, incorporating the Hearing Examiners' summaries of the evidence, findings and reasoning, and adopting their recommendations. Each such reference is intended to, and hereby does, incorporate and adopt the relevant portion of the Hearing Examiners' Reports as the Commission's own, as if fully set forth herein. Accordingly, the April 7, May 9, and May 27 Reports are attached to the original hereof as Exhibits A, B, and C, respectively, and are hereby made a part hereof.

of equity of 12%, and a capital structure of 40% debt and 60% equity.

29. We find these recommendations to be reasonable. The Commission concludes that a cost of equity of 12% is reasonable given current low interest rates and economic conditions. (5-0) Similarly, a cost of debt of 7.7% appears reasonable to us for the reasons articulated by the Hearing Examiners. (5-0) An assumed capital structure of 40% debt and 60% equity is likewise reasonable and appropriate for this jurisdiction. (4-1, Hartley opposed). An overall cost of capital thus derived, and now approved, is 10.28%. (5-0)

(b) Depreciation Rates

30. The Hearing Examiners summarized the evidence and arguments of the parties concerning the appropriate depreciation rate in the April 7 Report at ¶¶ 69-80, which the Commission incorporates by reference.⁵ The Hearing Examiners concluded that the depreciation values advocated by BA-Del are unrealistically

⁵BA-Del contends that the Hearing Examiners' conclusion, in ¶ 78 of the April 7 Report; that "prior to the instant case, BA-Del has relied upon the FCC's prescribed depreciation lives in its TSLRIC cost studies" is factually in error, at least with respect to cost studies submitted on and after August, 1995. The Commission's determination to use the FCC lives is not based upon this disputed finding.

short. They recommended instead that the Commission adopt the forward-looking plant lives and depreciation rates prescribed by the FCC for BA-Del, as advocated by AT&T. The Commission agrees that BA-Del's suggested depreciation lives are unrealistically short, and that the FCC lives are the more reasonable ones on this record. (5-0)

(c) Fill Factors

31. Fill factors are a measure of the utilization of a given network element. The evidence and arguments of the parties concerning fill factors is summarized at ¶¶ 82-101 of the April 7 Report. The Commission incorporates this summary by reference herein. Based on this evidence and these arguments, the Hearing Examiners recommended that the Commission adopt a copper feeder fill factor of [BA-DEL PROPRIETARY BEGINS] [BA-DEL PROPRIETARY ENDS], an F2/F1 ratio of [BA-DEL PROPRIETARY BEGINS] [BA-DEL PROPRIETARY ENDS], a distribution factor of 50% to 75% and a fiber electronics fill factor of [BA-DEL PROPRIETARY BEGINS] [BA-DEL PROPRIETARY ENDS]. We find the Hearing Examiners' analysis of fill factor issues at ¶¶ 102-112 of the April 7 Report to be persuasive and we now adopt the Hearing Examiners' recommendations. (5-0)

(d) Copper/Fiber Mix

32. The copper/fiber breakpoint is the point at which fiber, rather than copper, will be placed in the outside plant network. The Hearing Examiners summarized the evidence concerning the appropriate breakpoint at ¶¶ 113-125 of the April 7 Report. The Hearing Examiners recommended that the Commission adopt a copper/fiber breakpoint of [BEGIN BA-DEL PROPRIETARY] [END BA-DEL PROPRIETARY]. The Hearing Examiners further recommended that the maximum distance that a customer can be from a digital loop carrier ("DLC") [BEGIN BA-DEL PROPRIETARY] [BA-DEL PROPRIETARY ENDS]. Based on our understanding that the copper/fiber breakpoint applies to loop length, not feeder length, we find these recommendations to be appropriate and adopt the findings and reasoning of the Hearing Examiners concerning these issues set forth in the April 7 Report at ¶¶ 113-127. (5-0)

(e) Switch Purchase Discount

33. In its cost studies for switches, BA-Del used the purchase discount available for "add on" equipment rather than replacement switches. The evidence showed that the discount which switch vendors offer for replacement switches is much higher than the discount for "add on" equipment. The other parties argued that the TELRIC methodology required use of a replacement discount rate

rather than the "add on" rate, resulting in lower switching costs. The Hearing Examiners summarized the evidence and the arguments of the parties concerning the switch purchase discount at ¶¶ 129-134 of the April 7 Report. That summary is incorporated herein by reference. The Hearing Examiners recommended a weighted average switch discount calculated as [BA-DEL PROPRIETARY BEGINS] [BA-DEL PROPRIETARY ENDS] replacement discount rate and [BA-DEL PROPRIETARY BEGINS] [BA-DEL PROPRIETARY ENDS] add on discount rate. The Commission finds this recommendation to be reasonable based on the evidence. The Commission adopts the Hearing Examiners' reasoning as set forth at ¶¶ 135-137. (5-0)

(f) Common Overhead Factor

34. In its August 8 Order, the FCC stated that the rates for network elements should recover a reasonable share of forward-looking joint and common costs. Order at ¶ 694; 47 C.F.R. § 51.505(a)(2) and (c). BA-Del, AT&T and Staff each proposed an across-the-board factor of some stated percent over directly attributable costs for recovery of joint and common costs. Thus, BA-Del proposed a mark-up of [BA-DEL PROPRIETARY BEGINS] [BA-DEL PROPRIETARY ENDS], while AT&T and Staff both proposed mark-ups of 10%. However, Staff further recommended that the Commission add further mark-ups in various amounts over the 10% flat mark-up.

Staff argued that such discretionary mark-ups would be appropriate to achieve certain policy objectives the Commission might wish to pursue. Thus, Staff suggested that a proportionally higher mark-up could be imposed on loop costs in urban density cells than in rural density cells in an effort to mitigate the inhibitory effect that de-averaging may have on the introduction of competition in higher cost areas and to offset the proportionally higher contribution made to common costs in higher cost areas when a flat percentage allocation is used.

35. The evidence and the positions of the parties concerning the common overhead factor is summarized in more detail at ¶¶ 138-149 of the April 7 Report, which the Commission hereby adopts by reference. The Hearing Examiners concluded that the common overhead factor of 10% advocated by Staff and AT&T was appropriate. The Hearing Examiners concluded that the additional discretionary mark-up advocated by Staff was not warranted..

36. The Commission agrees with the Hearing Examiners that a common cost recovery factor of approximately 10% of the directly attributable forward-looking cost of an element is appropriate in this proceeding and adopts the Hearing Examiners' reasoning therefor. However, the Commission agrees with Staff that

the Commission retains the discretion to vary the level of the mark-up in furtherance of public policy objectives. (5-0)

(g) Next Generation Digital Loop Carrier Cost

37. In those instances where fiber and digital loop carriers ("DLCs") are to be deployed to serve customers beyond the fiber/copper breakpoint, the BA-Del loop cost studies assume the deployment of Next Generation Digital Loop Carrier ("NGDLC") equipment. BA-Del currently utilizes both Integrated Digital Loop Carrier ("IDLC") and Universal Digital Loop Carrier ("UDLC") equipment. For its cost studies, BA-Del priced the NGDLC systems exactly midway between IDLC and UDLC costs. Other parties argued that instead of this average, only the cost of IDLC should be used. Using IDLC results in a lower cost for the unbundled loop element.

38. The evidence and the arguments of the parties are summarized at ¶¶ 151-156 of the April 7 Report. Evaluating this evidence, the Hearing Examiners were "unconvinced" that use of IDLC cost only would best represent NGDLC cost. They therefore recommended adoption of BA-Del's proposed 50-50 split between IDLC and UDLC cost. The Commission adopts this recommendation. (5-0).

(4) De-averaging

39. The FCC Order expressly requires geographically de-averaged rates for interconnection and network elements and

requires state commissions to adopt at least three separate rate zones. Order at ¶ 797. BA-Del's SGAT used the three existing density zones which the Commission first approved in 1983 in PSC Docket 82-32. Other parties argued that the existing density zones do not accurately reflect true geographic cost variations and recommended restructuring the rate zones.

40. The parties' evidence and arguments concerning rate de-averaging are summarized in ¶¶ 158-163 of the April 7 Report. The Commission incorporates this summary herein by reference. The Hearing Examiners concluded that none of the de-averaging proposals (including the use of existing density cells) had been shown to accurately reflect actual geographic cost differentials. However, the Hearing Examiners further concluded that developing a satisfactory record demonstrating such actual cost differentials would unduly delay BA-Del's opportunity to refile an SGAT in this docket. Therefore, the Hearing Examiners recommended that the Commission permit BA-Del to refile its rates for unbundled elements using the existing density zones, but that the Commission should also direct BA-Del to present to the Commission by March 31, 1998:

current information regarding its density zones and how they relate to the causation of cost differentials between different geographical areas in Delaware.

The Hearing Examiners suggested the Commission, with such information, could then modify the density zones and direct BA-Del to revise its UNE rates to reflect such modified zones. We find these recommendations reasonable and adopt them. (5-0)

(5) Specific Rates For Unbundled Elements

41. The Hearing Examiners' April 7 Report did not recommend adoption of particular rates for unbundled network elements. Instead, it recommended approval of fourteen specific inputs to the cost models and recommended that these inputs be used in developing specific rates. In the preceding portions of this Order, we have adopted the Hearing Examiners' recommended inputs. By Order 4488, we directed BA-Del, AT&T, and Staff to run the competing cost models using these inputs and to submit the resulting rates to the Hearing Examiners for their use in recommending particular rates for unbundled network elements to the Commission. These parties did so and, accordingly, the Hearing Examiners' May 9 Report contains recommended rates for specific unbundled network elements.

42. The May 9 Report summarizes the results of the parties' runs and the Hearing Examiners' reasoning in recommending particular rates at ¶¶ 9-31. The Commission incorporates this summary herein by reference. The Hearing Examiners' recommended

rates for network elements are set forth in Attachment A to the May 9 Report. By Interlocutory Order 4488, the Commission directed the Hearing Examiners:

to consider flexibility in applying the common cost recovery factor in furtherance of public policy objectives, including the Public Advocate's concern about the cost and prices applicable to rural areas of the State.

Thus, for certain elements, Attachment A sets forth two alternative rate recommendations: the first column represents the rates derived using a flat 10% common cost recovery allocation while the second column represents a slightly varied allocation. In particular, the rates recommended in the second column include a \$1.10 contribution per line for basic unbundled loops for all three density cells. This equates to a 12%, 9% and 7% contribution toward common costs for unbundled loops in density cells 1, 2 and 3, respectively. The Hearing Examiners concluded that:

We believe that varying the percentage contribution towards common cost recovery in this flexible manner would produce a more equitable result between the different density cells. Moreover, under this "flexible" approach to common cost recovery, the objective that having some common cost recovery for loops in each density cell is maintained, and the prices of loops in each of the three density cells still includes an element for common cost recovery.

May 9 Report at ¶ 19.

43. Like the Hearing Examiners, the Commission concludes that it is in the public interest to impose no greater cost disparity than necessary by reason of density zones. Previously in this Order we determined that the Commission has discretion to approve a common cost recovery mechanism which varies from a flat percentage over direct costs, in furtherance of public policy goals such as this. Supra, at ¶ 35-37. Thus, we approve the rates recommended by the Hearing Examiners shown in Attachment A to the May 9 Report. We adopt the "flexible" common cost recoveries shown in the second column of that attachment for those elements for which the Hearing Examiners made alternative recommendations. (5-0) Exhibit D to this Order sets forth the rates hereby adopted.

C. Resale Rates

44. U.S.C. § 251(c)(4)(A) requires the ILECs, such as BA-Del:

to offer for resale at wholesale rates any telecommunication service that the carrier provides at retail to subscribers who are not telecommunication carriers.

Section 252(d)(3) specifies that prices for such resold services must be determined:

on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing,

collection or other costs that will be avoided by the local exchange carrier.

Although the FCC established certain guidelines for determining what costs are to be considered avoided, the choice of an avoided cost study methodology is left up to the state commission. FCC Order at ¶ 15.

45.. The evidence and arguments of the parties are summarized by the Hearing Examiners in the April 7 Report at ¶¶ 169-191. That discussion is incorporated herein by reference. The Hearing Examiners recommended a wholesale discount rate of 20% for resellers who do not use BA-Del operator services and a discount rate of 16% for resellers who use BA-Del operator services. We adopt this recommendation, finding persuasive the Hearing Examiners' analysis of the issue found at ¶¶ 192-197 of the April 7 Report. (5-0)

D. Other Cost and Rate Issues

(1) Non-Recurring Charges

46. Non-recurring costs are the one-time expenses incurred by an ILEC switching a customer's service over to a new entrant. The Hearing Examiners' April 7 Report made no recommendation concerning BA-Del's proposed non-recurring charges. By Order 4488, the Commission directed the Hearing Examiners to

consider this issue on remand. The Hearing Examiners' May 9 Report recommended that the Commission approve BA-Del's proposed non-recurring charges. By Order 4508, we directed the Hearing Examiners to reconsider this issue in more detail. The Hearing Examiners' May 27 Report accordingly analyzes in detail the evidence submitted by the parties and their arguments on this issue. The Hearing Examiners again concluded that:

BA-Del has supported its estimates, whereas the estimates of AT&T witness Murray appear to be overly aggressive and without adequate support.

Thus, the Hearing Examiners again recommended adoption of BA-Del's proposed non-recurring charges.

47. The Hearing Examiners' summary of the evidence on this issue, found in ¶¶ 45-47 of the May 9 Report and ¶¶ 13-20 of the May 27 Report, are incorporated herein by reference. We find the Hearing Examiners' analysis of the evidence, and assignments of credibility, to be reasonable based on the record. We, accordingly, adopt their recommendations. (5-0) Attachment B to the Hearing Examiners' May 9 Report, setting forth the non-recurring charges which we now adopt, is attached hereto as Exhibit E.

(2) Assessment of Operations Support Systems
Charges on Resale

48. BA-Del's proposed SGAT includes certain Operations Support Systems ("OSS") charges for pre-ordering, ordering, provisioning, maintenance and repair, and billing. AT&T took issue with these proposed OSS charges arguing: (1) that the cost calculations contain various errors; and (2) that the OSS charges should not be assessed on resellers because resellers would then be required to pay twice for the same service (first as a separate OSS charge and again in the wholesale rate). The Hearing Examiners did not address this issue in the April 7 Report. By Order 4488, the Commission directed the Hearing Examiners to examine the issue and make recommendations to the Commission. The Hearing Examiners did so by their May 9 Report. AT&T then asserted that the Hearing Examiners' recommendations were based on a mistaken understanding of the facts. We again required the Hearing Examiners to consider the issue again on remand by Order 4508. The results of this reconsideration are set forth in the May 27 Report.

49. The evidence and arguments of the parties on this issue are summarized in the May 9 Report at ¶¶ 33-35 and in the May 27 Report at ¶¶ 5-10. Those discussions are incorporated herein by reference. In both the May 9 and May 27 Reports, the Hearing

Examiners concluded that BA-Del's OSS charges should be recalculated to reflect three revisions proposed by AT&T but that AT&T's contention that assessment of OSS charges against resellers would result in a "double count" was unsupported by the record.

50. The Hearing Examiners have carefully reviewed the evidence in the arguments on this issue. The Commission accepts their analysis and their assignments of credibility of witnesses. Accordingly, the Commission adopts the recommendations of the Hearing Examiners that BA-Del's OSS charges be recalculated to reflect the following three revisions:

- (a) Eliminate the investment costs associated with the ordering and 3-ordering elements for all but the first year of implementation;

- (b) Treat the start-up expense for the ordering element as an investment and limit expense dollars to a reasonable forward-looking level; and

- (c) Eliminate the costs for land and buildings, because BA-Del has not proven that it will incur new land and building costs associated with provision of access to OSS.

51. The Commission further accepts the Hearing Examiners' recommendation that no further modifications or alterations to the OSS charge or the wholesale discount rate are

necessary to remove a "double count" of these charges to resellers.
(5-0).

(3) Customized Routing Charges

52. In its exceptions, AT&T argued that BA-Del's proposed prices for the customized routing of operator services and directory assistance ("OS/DA") calls to a CLEC's OS/DA platform are excessive and should be rejected. In particular, AT&T objected to BA-Del's proposed cost for the development of a specialized routing network ("SRN"). Further, AT&T argued that the separate OS/DA re-routing charge applies only in a resale environment, and that when a CLEC purchases unbundled elements, the re-routing function is included as part of the unbundled switching function. On remand, the Hearing Examiners agreed with AT&T that the rates BA-Del has proposed for the SRN are unreasonable and concluded that it was imprudent for BA-Del to have incurred such a cost to meet an AT&T "demand" without first obtaining AT&T's prior agreement. By the May 9 Report, the Hearing Examiners recommended that the customized routing charge should be reduced by 47%, which, they reasoned, would remove half of the cost associated with the SRN. We agree and adopt a per-line rate of \$0.073942 for customized routing.

(5-0)

(4) Cross-Connect Rate

53. Using the Commission-approved input values, BA-Del submitted recalculated rates for cross-connects which are 29 to 39% below those presented in its initial filing. AT&T, however, urged on remand that the total cross-connect cost presented by its witness, Terry Murray, be adopted. In the May 9 Report, the Hearing Examiners concluded that their second review of the testimony, briefs and exceptions on this issue still left them unpersuaded that further reductions to the cross-connect rates were warranted. The Commission agrees and approves the recalculated cross-connect rates determined by BA-Del using the Commission approved inputs. (5-0)

E. Policy Issues

(1) Reduction of BA-Del's Retail Rates

54. The OPA argues that § 707(c)(6) of the Telecommunications Technology Investment Act ("TTIA") 26 Del. C. § 704 et seq., requires a downward adjustment to rates for basic intrastate service as a result of BA-Del's expected sale of unbundled elements. The OPA asserts that BA-Del's new interconnection rates for UNEs are, in effect, new separations rules, which represent a shift of separate costs out of the intrastate revenue requirement. The OPA contends that, since there

is no mechanism to recapture the resulting "earnings" in intrastate rates, the "excess revenues" represent an exogenous change in costs favoring the company and requiring a reduction in basic rates under § 707(c)(6). BA-Del denies that there is a "duplicative" cost recovery or "windfall" and claims that it will lose retail revenues as competitors begin to serve customers now served by BA-Del. Moreover, BA-Del argues that this is not the appropriate forum to consider the OPA's claim and that under 26 Del. C. § 707(c)(6), rates for basic services may only be changed "upon the application by any ratepayer or the service provider," and no such application has been made.

The Hearing Examiners concluded that the OPA had not shown the necessity of a downward adjustment to rates for basic services and that this proceeding is not the proper forum in which to consider the OPA's claims. The Commission agrees that this proceeding is not the appropriate one to determine arguments of this nature. The OPA remains free to raise its assertions in a different proceeding, should it choose. (5-0)

(2) Requirement That BA-Del Establish A Separate
Subsidiary

55. MFS recommends that the Commission require BA-Del to establish a separate subsidiary for the sale of unbundled elements

as a condition to approving any SGAT. The Hearing Examiners concluded that the issue is beyond the scope of this proceeding and that establishment of such a separate subsidiary is not required by the Act or the FCC Order. The Commission agrees with the Hearing Examiners' conclusions and will not require BA-Del to establish a separate subsidiary for the sale of unbundled network elements.

(5-0)

(3) Resolution of Section 271 Issues

56. The Hearing Examiners recommended that the Commission decline to make any findings in this proceeding regarding BA-Del's compliance with 47 U.S.C. § 271. The Commission agrees. (5-0) The Commission has established PSC Docket 96-234, currently pending, to investigate the status of BA-Del's compliance with § 271 when BA-Del seeks interLATA authorization.

F. Technical Issues

(1) Number Portability

57. AT&T and Sprint contend that the SGAT does not satisfactorily address BA-Del's obligation to provide interim number portability. The arguments of the parties concerning this issue are summarized by the Hearing Examiners at ¶¶ 207-209 of the April 7 Report.

58. The Hearing Examiners concluded that the proposed SGAT, as filed, meets the requirements of the Act concerning interim number portability. The Hearing Examiners recommended that consideration of the adequacy of the means by which BA-Del proposes to provide number portability should be deferred to the Commission's currently pending number portability docket, PSC Regulation Docket No. 46. However, they also recommended that the Commission require any refiled SGAT to fully comply with all rules and regulations promulgated in that docket. We agree with the Hearing Examiners and adopt their recommendations in all respects.

(5-0)

(2) Dialing Parity

59. A number of parties, including AT&T and Sprint, take the position that BA-Del has not met its obligation to provide intraLATA toll dialing parity. These parties assert that no SGAT should be approved until dialing parity is actually available to competing providers of intraLATA toll service. By Order 4491, May 13, 1997, PSC Docket No. 42, Phase II, the Commission required BA-Del to implement intraLATA toll dialing parity no later than September 15, 1997.

The Hearing Examiners found merit in Sprint's contention that, in the event that the proposed SGAT might be approved as

filed prior to the dialing parity implementation date, the SGAT would not comport with the requirements of 47 U.S.C. § 251(b)(3). By this Order the Commission declines to approve the SGAT as filed. However, the Commission determines that in the event BA-Del chooses to refile an SGAT, the provisions thereof must fully comply with all rules and regulations promulgated in Regulation Docket 42.

(5-0)

(3) Poles, Ducts, Conduits and Rights-of-Way

60. Section 251(b)(4) requires all incumbent LECs to afford access to poles, ducts, conduits, and rights-of-way to competing providers of telecommunications services on rates, terms, and conditions that are consistent with 47 U.S.C. § 224. In PSC Regulation Docket 16, this Commission issued regulations entitled "Regulations Governing Tariffs Which Set Forth Rates, Terms, And Conditions For The Attachment To Any Pole, Duct, Conduit, Right-of-Way, Or Other Similar Facilities Of Any Public Utility." (PSC Regulation Docket No. 16, Order No. 3092, Nov. 11, 1989). BA-Del's right-of-way agreements are made pursuant to those regulations, and because Delaware has chosen to regulate access to rights-of-way, the Delaware regulations will continue to govern under 47 U.S.C. §§ 224 and 251(b)(4).

The arguments of the parties concerning access to poles, ducts, conduits, and rights-of-way under the proposed SGAT are summarized at ¶¶ 213-216 of the April 7 Report. The Hearing Examiners concluded that BA-Del's proposed SGAT provides for nondiscriminatory access to poles, ducts, conduits, and rights-of-way in a manner which is consistent with the Act and with the Regulation Docket 16 Rules. The Commission agrees and will not require modifications to the SGAT on this issue. (5-0)

(4) Reciprocal Compensation

61. AT&T argues that the Commission should impose a "bill-and-keep" method of reciprocal compensation as part of BA-Del's SGAT. BA-Del and MFS opposed mandatory provision of bill-and-keep. The Hearing Examiners concluded that bill-and-keep, an arrangement under which no compensation is exchanged for the termination of traffic, is appropriate only where the affected carriers agree between themselves to implement it. Moreover, they concluded that the evidence did not show that traffic will be in balance between carriers. Without approximate balance in traffic, bill-and-keep may result in inequities. We agree and adopt the Hearing Examiners' recommendation to not mandate bill and keep. (5-0)

(5) Rebundling Unbundled Elements

62. 47 U.S.C. § 251(c)(3) requires ILECs to provide UNES "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." Despite this provision, section 11.1 of the proposed SGAT provides that:

Requesting CLEC shall not recombine Network Elements purchased from BA-Del for use as a substitute for the purchase at wholesale rates of Telecommunications Services that BA-Del provides unless otherwise mandated by the FCC or the Commission or agreed to by BA-Del with other carriers.

Several parties asserted that this proposed provision violates § 251(c)(3). The Hearing Examiners agreed. The Commission adopts the Hearing Examiners' recommendation and directs BA-Del to omit this provision from the SGAT, in the event BA-Del chooses to refile. (5-0)

(6) Unbundled Element Warranties

63. Section 11.9.4 of BA-Del's SGAT states that "BA-Del makes no warranty that [unbundled local loops] or unbundled ports supplied by BA-Del . . . will be compatible with the service . . . CLEC will offer to its customers." AT&T argues that this provision, if allowed to stand, would remove from BA-Del any

incentive to cooperate with AT&T and other competitive local exchange carriers ("CLECs") to ensure compatibility of unbundled loops and ports. BA-Del argues that it is prepared to provide unbundled loops and ports meeting the standards and specifications included in Bell Atlantic's Technical Reference Documents, but that it cannot guarantee the performance or compatibility of an end-user or CLEC customer service. BA-Del claims that the FCC Order does not require a warranty of compatibility. The Hearing Examiners were persuaded by BA-Del's position, as is the Commission. The Commission will not require BA-Del to modify this term in the event it refiles an SGAT. (5-0)

(7) BA-Del Notification Of New Unbundled Elements

64. Under Section 11.10.3 of the SGAT, BA-Del undertakes to notify requesting CLECs of the availability of new network elements on an annual basis. Staff asserted that annual notification is insufficient in the telecommunications industry where technological change is occurring at a rapid pace. The Hearing Examiners concurred and recommended that the Commission require BA-Del to revise this provision of its SGAT. The Commission agrees. If BA-Del elects to refile an SGAT, this provision must be revised to provide for monthly notification to requesting CLECs of new network elements. (5-0)

(8) Loops Conditioned For ADSL and HDSL

65. The MFS witness presented testimony advocating that BA-Del be required to provide MFS with loops conditioned for asymmetric digital subscriber line ("ADSL") and high bit rate digital subscriber line ("HDSL"). However, MFS did not pursue this issue in its brief and the Hearing Examiners concluded that the record does not support requiring any change to BA-Del's SGAT in this regard. We concur. (5-0)

(9) Tandem Rate For Non-Tandem Switch

66. MFS and AT&T contended that CLECs should be able to charge BA-Del a tandem rate even though the CLEC may not employ a tandem switch for calls terminated on the CLEC's network. The parties' arguments concerning this issue and BA-Del's response are summarized in the April 7 Report at ¶¶ 230-233. The Hearing Examiners concluded that BA-Del should not be required to pay the higher tandem termination rate where the CLEC is not using a tandem switch. Instead, the Hearing Examiners found reasonable BA-Del's proposal to base the rate for termination at each CLEC's switch on the weighted average rate charged by BA-Del to the CLEC for call termination during the previous calendar quarter. We concur and adopt the Hearing Examiners' recommendations. (5-0)

(10) Additional White Page Listings And Other White Page Services

67. AT&T argued that BA-Del should be required to make additional white page listings and related services available to resellers at the normal wholesale discount or, alternatively, at TELRIC rates as unbundled network elements. The Hearing Examiners concluded that this issue is outside the scope of this proceeding and should be resolved in the arbitration of the AT&T/BA-Del Interconnection Agreement. We accept this recommendation and decline to require BA-Del to make the requested change. (5-0)

(11) Reciprocal Unbundling And Collocation

68. Section 11.1 of the proposed SGAT attempts to impose on CLECs reciprocal unbundling and resale requirements. Similarly, at Section 13.2, the SGAT states that "[a]lthough not required to do so by . . . the Act, by this Statement Requesting CLEC agrees to offer BA Collocation." The Hearing Examiners recommended that BA-Del should be directed to omit these provisions in any refiled SGAT since the Act does not impose such reciprocal obligations. The Hearing Examiners further observed that this issue should be left to negotiations and/or arbitration. We concur and conclude that, in the event BA-Del chooses to refile its SGAT, this provision shall be omitted therefrom. (5-0)

(12) Collocation Of Remote Switch Modules

69. Section 13.0 of the proposed SGAT provides that collocation of equipment is permitted solely to interconnect with BA-Del facilities or services or to access BA-Del's unbundled network elements. AT&T seeks to collocate switching equipment, including remote switching models ("RSMs"), and asks that the Statement be modified to allow collocation of RSMs for switching purposes. The Hearing Examiners concluded that this was an issue more appropriately dealt with in arbitration. We agree and decline to require the requested modification. (5-0)

(13) Network Interface Devices

70. AT&T seeks to have the Commission determine the technical feasibility of directly connecting its distribution plant to BA-Del's network interface devices ("NIDs"). BA-Del responds that the FCC Order requires only that BA-Del permit CLECs to connect to BA-Del's NIDs via its own NID and that this is what BA-Del's statement offers. The Hearing Examiners concluded that BA-Del's position is consistent with the FCC Order. The Commission agrees and declines to determine the technical feasibility of directly connecting AT&T's distribution plant to BA-Del's NIDs. (5-0)

(14) Rental of Copper or Fiber

71. Staff recommended that BA-Del be directed to include a provision in the SGAT permitting CLECs to rent copper, rather than fiber, distribution cable where copper is available. Staff contended that where BA-Del is in the process of converting to optical fiber (thereby causing circuit electronics to become necessary), the existing copper cable may soon become surplus. In those situations, Staff argued, copper cabling should be offered on an unbundled basis, without requiring the purchaser to acquire any unwanted facilities or services, like circuit electronics. Staff contended that such a requirement would ensure compatibility between the carrier's own equipment and the rented loop and will provide the carrier with the option of installing its own circuit electronics if it chooses. The Hearing Examiners found Staff's position reasonable and recommended it to the Commission. The Commission agrees. If BA-Del chooses to refile an SGAT, it is directed to include a provision permitting CLECs to rent copper, rather than fiber distribution cable, where copper is available.

(5-0)

(15) Further Sub-Loop Unbundling

72. AT&T asked that the Commission endorse a policy of subloop unbundling. The Hearing Examiners concurred with BA-Del

and Staff that further sub-loop unbundling is not required at this time. We agree. (5-0)

(16) Operations Support Systems

73. AT&T asserts that the Operations Support Systems ("OSS") interface that BA-Del proposes to provide to CLECs is inferior to that which BA-Del provides itself and, thus, is in violation of the Act and FCC Order. OSS are the systems and databases that provide the essential information and functionality required to perform the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions for the sale of unbundled elements or the resale of telecommunications service. The Hearing Examiners recommended that the Commission direct BA-Del to revise Section 9.5 and Section 2.3 of Schedule 12.3 of the SGAT to provide for CLEC access to OSS functions which are the equivalent to the functionalities that BA-Del provides for itself. The Commission adopts this recommendation. (5-0) The Commission also accepts the Hearing Examiners' recommendation that the Commission refuse AT&T's request that it "compel BA-Del to move forward quickly with the necessary upgrades to its systems that are required for fully electronic interfacing with CLEC systems" as beyond the scope of this proceeding.

(17) Residual Interconnection Charge

74. AT&T asks that BA-Del be required to eliminate the residual interconnection charge ("RIC") included in the local transport rate structure. The Hearing Examiners concluded that this issue is outside the scope of this proceeding. We concur.

(5-0)

(18) AIN Switch Triggers

75. AT&T requested that the Commission require BA-Del to give CLECs access to Advanced Intelligent Network ("AIN") switch triggers in BA-Del's switches by connecting their Service Control Points directly to BA-Del's Signal Transfer Points. The Hearing Examiners recommended that the Commission decline to impose such a requirement and we concur. (5-0)

(19) Written Authorization For Carrier Changes

76. The proposed SGAT would require CLECs to obtain written authorization from a customer to change carriers. BA-Del contended that this provision is consistent with the rules recently promulgated by the Commission in Regulation Docket No. 45. AT&T asserted that BA-Del and most other telephone companies take service orders by telephone and that the requirement would therefore impose an unequal burden only on CLECs, thereby deterring competitive entry. The Hearing Examiners concluded that the BA-Del

provision is consistent with the Commission's determination in Regulation Docket 45 and recommended no modification.

77. The Commission continues to believe that written authorization is an important protection against the practice of "slamming." However, the Commission believes that anti-slamming measures must be imposed on all carriers equally. Thus, the Commission accepts the Hearing Examiners' recommendation on the explicit condition that the requirement of a written authorization shall apply to all customer changes between local exchange service providers, including a change from a competitive provider to the incumbent LEC. The Commission directs Staff to promptly commence the process of amending the Commission's rules or regulations to ensure that a written authorization requirement applies equally to all carriers, including BA-Del, in the event the Commission's rules or regulations do not already clearly so reflect. (5-0)

(20) Service Quality Measures

78. MFS contends that the Commission must ensure that systems are in place to provide all requesting carriers with the level of service quality and responsiveness that the incumbent LEC provides to its own customers and to itself. MFS thus suggests establishment of "generic service quality reporting and monitoring mechanisms." The Hearing Examiners observed that the Commission

has already established service quality standards and that MFS's recommendation lacks specifics concerning what modifications to the SGAT should be required to accomplish its recommendation. Accordingly, they recommended no change be required to the SGAT in connection with service quality measures. We concur. (5-0)

(21) Dispute Resolution Mechanism

79. MFS urges the Commission to "adopt effective and rapid dispute resolution procedures to resolve the inevitable problems that will arise with implementation of the local competition provisions of the Act." However, it did not recommend any specific procedures. AT&T asserted that the "bona fide request" process advocated by BA-Del, together with the absence of an established dispute resolution mechanism, is fraught with anti-competitive opportunities and should be rejected. AT&T suggested that the SGAT include the following provision:

Any disputes should be communicated by the concerned party, in writing, to the other party. If resolution through negotiations cannot be achieved within thirty days, either party may request arbitration or mediation through the Commission, which should be resolved in thirty days. If a party believes the issue to be so critical that it is of an emergency nature, then it may forego the thirty-day negotiation period, file its request for mediation or arbitration at the same time the complaint is filed with the

other party, and request expedited resolution by the Commission.

The Hearing Examiners found this provision to be reasonable and consistent with the objectives of the Act, particularly in light of the fact that AT&T and BA-Del have agreed to support the establishment of an expedited dispute resolution process. We agree and accept the Hearing Examiners' recommendation that BA-Del's SGAT, should BA-Del choose to refile, shall incorporate the above-stated provision establishing a dispute resolution mechanism.

(5-0)

(22) Equivalent Standards For Installation And Maintenance Performance Levels

80. AT&T requested that BA-Del's standards for installation and maintenance performance should mirror those established for service provided to its own customers. According to AT&T, unless BA-Del agrees to deliver the same level of service regardless of the identity of the customer, customers of CLECs will not be assured the same treatment both in terms of timeliness and accuracy. The Hearing Examiners agreed with AT&T and recommended that BA-Del be directed to expressly commit to establish equivalent standards for installation and maintenance performance levels. The

Commission agrees and directs BA-Del to include such a provision should it refile the SGAT. (5-0)

(23) CLEC Access To Customer Guide

81. AT&T asserted that BA-Del's SGAT "unfairly seeks to retain editorial control and a veto-like power over the substance of a CLEC's customer service information contained in BA-Del's Customer Guide." AT&T argued that BA-Del will have an incentive to be uncooperative with the CLECs in dictating the parameters of the information to be included in the Customer Guide portion of the telephone directory published by BA-Del or its affiliate.

82. The Hearing Examiners concluded that AT&T's concerns were reasonable and that access by new entrants to the BA-Del telephone directory is an important and necessary element of a competitive environment. Thus, the Hearing Examiners recommended that the Commission require BA-Del, in any subsequently filed SGAT, to include a general provision enabling CLECs to provide customer-oriented service information of their choosing, with a designated page limit of four pages per CLEC. BA-Del took exception to this recommendation, asserting that a four-page minimum is excessive and would make the telephone directory cumbersome and confusing.

83. The Commission shares the Hearing Examiner's concern that CLECs be given reasonable access to BA-Del's telephone

directory. However, the Commission believes that the Hearing Examiners' suggestion of a four-page limit may be subject to abuse. Accordingly, we direct BA-Del, should it choose to refile the SGAT, to include a provision affording CLECs the opportunity to display equivalent information concerning customer service in the BA-Del directory as is displayed by BA-Del itself, and that both CLECs and BA-Del will have the opportunity to purchase additional advertising space should they choose. (5-0)

NOW, THEREFORE:

A. The Commission finds that the BA-Del Statement of Generally Available Terms and Conditions, as filed in this proceeding, does not meet the statutory requirements set forth in 47 U.S.C. §§ 251 and 252 and, accordingly, it is not approved.

B. The Commission finds and adopts as appropriate for determining the justness and reasonableness of SGAT rates in Delaware the FCC's Total Element Long Incremental Cost ("TELRIC") pricing methodology, regardless of whether or not the states are ultimately required to use the TELRIC standard by the Act or FCC regulation.

C. The Commission declines to adopt any of the cost models presented in this proceeding.

D. The Commission adopts the following input values as appropriate:

- (1) A Cost of Debt of 7.7%;
- (2) A Cost of Equity of 12%;
- (3) A Capital Structure consisting of 40% debt and 60% equity;
- (4) An overall Cost of Capital of 10.28%;
- (5) The Depreciation Rates prescribed by the FCC for BA-Del;
- (6) A Copper Feeder Fill Factor of [BA-DEL PROPRIETARY BEGINS] [BA-DEL PROPRIETARY ENDS];
- (7) An F2/F1 ratio of [BA-DEL PROPRIETARY BEGINS] [BA-DEL PROPRIETARY ENDS];
- (8) A Distribution Fill Factor of 50% to 75%;
- (9) A Fiber Electronics Fill Factor of [BA-DEL PROPRIETARY BEGINS] [BA-DEL PROPRIETARY ENDS];
- (10) A fiber/copper breakpoint of [BA-DEL PROPRIETARY BEGINS] [BA-DEL PROPRIETARY ENDS];

- (11) A maximum distance that a customer can be from a DLC of [BA-DEL PROPRIETARY BEGINS] [BA-DEL PROPRIETARY ENDS];
- (12) A switch discount that is weighted [BA-DEL PROPRIETARY BEGINS] [BA-DEL PROPRIETARY ENDS] on the "replacement" discount rate and [BA-DEL PROPRIETARY BEGINS] [BA-DEL PROPRIETARY ENDS] on the "add-on" discount rate;
- (13) Common overhead cost recovery of approximately 10% of all corporate overhead retail costs (other than retail only costs), though the Commission retains discretion to vary the level of overhead cost recovery as it deems appropriate in furtherance of public policy objectives; and
- (14) For NGDLC Cost, BA-Del's proposed 50%/50% split between IDLC and UDLC costs.

E. The Commission determines that, should BA-Del elect to re-file its SGAT, it may do so using the existing density zones in Delaware.

F. The Commission directs BA-Del to present to the Commission, no later than March 31, 1998, then current information regarding BA-Del's density zones and how they relate to the causation of cost differentials between different geographical areas in Delaware so that the Commission may, if it deems appropriate, consider revising rates for unbundled network elements to reflect updated or different density zones.

G. The Commission finds the just and reasonable rates for BA-Del's unbundled network elements to be as set forth in Exhibit D to this Order. In the event BA-Del chooses to refile an SGAT, BA-Del is directed to incorporate these rates therein.

H. The Commission finds and adopts as reasonable and appropriate a wholesale discount rate of 20% for resellers who do not use BA-Del operator services and a wholesale discount rate of 16% for resellers who use BA-Del operator services.

I. The Commission finds the just and reasonable level of BA-Del's non-recurring charges to be as set forth in Exhibit E hereto. In the event BA-Del chooses to refile an SGAT, BA-Del is directed to incorporate these rates therein.

J. The Commission finds that the calculations submitted by BA-Del for the proposed OSS charges do not result in a "double count" as alleged by AT&T and that, consequently, no modifications

or alterations to the OSS rate are necessary to remove such double counting.

K. Notwithstanding Paragraph J above, in the event BA-Del chooses to refile an SGAT; the Commission directs it to recalculate its OSS charges to reflect the three revisions set forth in ¶ 50 of this Order;

L. The Commission finds the just and reasonable per-line rate for customized routing of operator services and directory assistance calls to a CLEC's OS/DA platform to be \$0.073942. In the event BA-Del chooses to refile an SGAT, this rate shall be incorporated therein.

M. The Commission will not require further modification to the cross-connect rates as recalculated by BA-Del using Commission approved inputs.

N. The Commission rejects the OPA's retail rate reduction proposal in this proceeding.

O. The Commission does not require BA-Del to establish a separate subsidiary for the sale of unbundled network elements.

P. The Commission declines to make any findings in this proceeding regarding BA-Del's compliance with the requirements of 47 U.S.C. § 271.

Q. Due to the ongoing status of PSC Regulation Dockets Nos. 42 and 46, the Commission finds and concludes that issues relating to IntraLATA Toll Dialing Parity and Interim Number Portability are best decided in those dockets. The Commission requires any re-filed Statement to fully comply with all rules and regulations promulgated in these dockets.

R. The Commission finds that, as filed, BA-Del's SGAT provides for nondiscriminatory access to poles, ducts, conduits and rights-of-way, consistent with the Act and PSC Regulation Docket No. 16 Rules and, therefore, need not be modified in this regard.

S. The Commission will not mandate a "bill and keep" arrangement for the compensation of exchanged traffic.

T. The Commission rejects BA-Del's provision which may be read to restrict the rebundling of unbundled elements as contrary to the Act and the FCC Order. In the event BA-Del refiles, such a provision shall be removed from the refiled SGAT.

U. The Commission will not require BA-Del to strike the "no warranty" provision from the SGAT.

V. The Commission will require BA-Del, under any refiled SGAT, to provide monthly notification of new network elements to requesting CLECs.

W. The Commission will not require BA-Del to provide loops conditioned for asymmetric digital subscriber line ("ASDL") and high bit rate digital subscriber line ("HDSL").

X. The Commission will not require BA-Del to pay a CLEC the higher tandem termination rate if the CLEC is not using a tandem switch. The rate for termination at each CLECs switch shall instead be derived from the weighted average rate charged by BA-Del to the CLEC for call termination during the previous calendar quarter.

Y. The Commission declines to adopt AT&T's position regarding additional white pages services.

Z. The Commission directs BA-Del to omit from any re-filed SGAT any provision that seeks to impose reciprocal unbundling and collocation obligations on CLECs.

AA. The Commission finds that issues relating to the collocation of Remote Switching Modules are best decided in individual arbitration proceedings between carriers.

BB. The Commission rejects AT&T's request to determine the technical feasibility of directly connecting AT&T's distribution plant to BA-Del's network interface devices;

CC. The Commission directs BA-Del to include in any refiled SGAT a provision that will permit CLECs to rent copper, rather than fiber, distribution cable where copper is available.

DD. The Commission will not mandate any additional sub-loop unbundling at this time.

EE. The Commission requires BA-Del to include in any refiled SGAT a requirement that specifically provides for CLEC access to OSS functionalities which are equivalent to the functionalities that BA-Del provides itself.

FF. The Commission finds that issues relating to the Residual Interconnection Charge are outside the scope of this proceeding and do not present a reason for rejecting BA-Del's SGAT.

GG. The Commission denies the AT&T request that, as part of this proceeding, CLECs be given access to AIN switch triggers in BA-Del switches by connecting their Service Control Points directly to BA-Del's Signal Transfer Points.

HH. The Commission will not require BA-Del to modify the SGAT provision relating to written authorization for carrier changes on the explicit condition that the requirement of a written authorization shall apply to all customer changes between local exchange service providers, including a change between a competitive service provider and the incumbent LEC. The Commission

directs Staff to promptly investigate whether the Commission's existing rules and regulations impose a written authorization requirement even-handedly on all carriers including BA-Del, and, if not, to commence proceedings to implement the necessary modifications to such rules and regulations.

II. The Commission requires no changes to BA-Del's SGAT in connection with service quality measures.

JJ. The Commission requires BA-Del to incorporate AT&T's recommended dispute resolution provision, set forth in ¶ 79, supra.


KK. In the event BA-Del chooses to refile an SGAT, it shall include a provision establishing equivalent standards for installation and maintenance performance for CLECs as those established for service provided to its own customers.

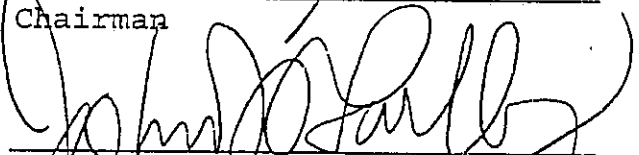
LL. In the event BA-Del chooses to refile an SGAT, it is directed to include a provision affording CLECs the opportunity to display equivalent information concerning customer service in the BA-Del directory as is displayed by BA-Del itself and providing that CLECs will have the opportunity to purchase additional advertising space on the same terms and conditions as BA-Del, or its directory publishing subsidiary or affiliate, provides to BA-Del.

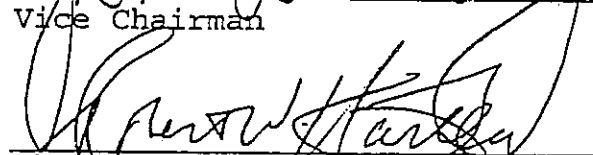
MM. In the event BA-Del chooses to refile an SGAT, the Commission shall determine whether the refiled SGAT conforms with the terms of this Order. The Commission may consider the comments of interested persons to assist it in this determination. If, in the discretion of the Commission, it is necessary or helpful to develop an evidentiary record, the Commission may, on its own motion or at the request of any interested party, commence appropriate proceedings.

NN. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:


Chairman


Vice Chairman


Commissioner

Commissioner

Commissioner

ATTEST:


Secretary